

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DARYL ARTHUR WITMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-08-1106-D
	)	
SHANE WYATT, Warden, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court for review of the Report and Recommendation [Doc. No. 43], issued April 2, 2009, by United States Magistrate Judge Doyle W. Argo pursuant to 28 U.S.C. § 636(b)(1). Judge Argo recommends the denial of Plaintiff's motions for a default judgment, for appointment of counsel, and for class certification in this *pro se* action under 42 U.S.C. § 1983 regarding the Grady County jail. Judge Argo further recommends that Plaintiff be directed either to file proof of service or to show cause for lack of service on the non-appearing defendants. Despite Plaintiff's request for additional time to file an objection, which was granted, no objection has been filed. Instead, Plaintiff has filed a motion requesting permission to amend his pleading because he "can now see the many mistakes made in his original and amended Petition i.e. bad service of summons, filing a class action as a Pro Se litigant . . . ." *See* Motion for Leave of Court to Amend Petition [Doc. No. 50].<sup>1</sup> It thus appears from the record that Plaintiff concedes the correctness of Judge Argo's recommended rulings in the April 2 Report. Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report.

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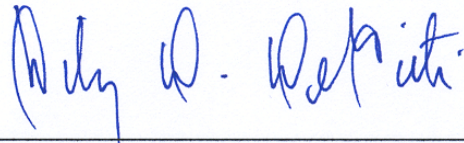
<sup>1</sup> This motion is the subject of a second Report and Recommendation issued May 12, 2009.

IT IS THEREFORE ORDERED the Report and Recommendation [Doc. No. 43] is ADOPTED in its entirety and the recommended rulings are issued as follows:

- Plaintiff's Motion for Default Judgment [Doc. No. 35] is DENIED;
- Plaintiff's Motion for Appointment of Counsel [Doc. No. 36] is DENIED;
- Plaintiff's Motion for Class Certification, filed as Amended Complaint for Class Action [Doc. No. 8], is DENIED.
- Plaintiff is directed to file proof of proper service on the non-appearing defendants or to show cause why service has not been timely made, as required by Fed. R. Civ. P. 4(l) and (m), within 20 days from the date of this Order.

The case remains under referral to Judge Argo pursuant to 28 U.S.C. § 636(b)(1) for further proceedings, as appropriate.

IT IS SO ORDERED this 20<sup>th</sup> day of May, 2009.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE